

DD/S SUBJECT FILE:

"Mexican Divorces"

OGC Has Reviewed

SB

Headquarters EMPLOYEE BULLETIN

STAT

17 June 1970

UNFAVORABLE CONSEQUENCES OF A MEXICAN DIVORCE

1. The following commentary originated in the Office of General Counsel and treats with the actual and potential consequences and problems confronting employees who obtain foreign divorces, in particular a "Mexican divorce."

2. The term "Mexican divorce" is generally understood to include a decree procured by any one of the following three methods:

a. The first method hereinafter termed the "Bi-party Divorce" is one in which the plaintiff personally appears in Mexico and where the defendant appears either in person in Mexico or through an attorney, duly appointed by the defendant to appear in the action for him or her.

b. Next is the so-called "One-Party Divorce" where the plaintiff appears personally in Mexico, institutes an action for divorce and where the defendant does not appear in person or through an attorney, but is given notice of the proceeding by personal service or by publication in the United States.

c. The third method is the so-called "Mail Order Divorce" in which either one or both parties appear in the action, but neither party is physically present in Mexico at any time. The parties appear through attorneys, whom they appoint by mail, and in due course receive a decree from Mexico, also by mail.

3. It can be stated unequivocally that the "mail order divorce" is not recognized by any American jurisdiction. The overwhelming majority of states that have ruled on the validity of the "one-party divorce" have held the decrees to be invalid. Lastly, even the "bi-party divorce" has been invalidated by some states that have ruled on them. New York appears to be the most notable exception by generally recognizing the validity of the "bi-party" Mexican divorce.

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4. The Mexican divorce has been the subject of considerable litigation. Such litigation can arise not only during the lifetime of the parties to the divorce, but particularly upon the death of either party when determining the lawful heirs to the decedent's estate. In addition to potential litigation problems, the Agency employee who is a party to a Mexican divorce and subsequently remarries is confronted with serious problems affecting his or her entitlement to various government benefits while living and also the distribution of benefits in the event of his or her death.

Increased Allowances on Account of Marital Relationship

5. The Comptroller General has repeatedly held that the Federal Government is not prevented from challenging the validity of a foreign divorce decree when its interests might be adversely affected. In numerous decisions the Comptroller General has consistently held that until a court of competent jurisdiction in the United States determines the validity of the particular Mexican divorce decree, a subsequent marriage is of too doubtful legality to permit the Government to approve increased allowances on account of such marital relationship. These cases have involved entitlement to increased quarters and subsistence allowances. Furthermore, these decisions have been the same whether the Mexican divorce was of the "mail order," "one-party," or "bi-party" variety. Even in the case of a "bi-party" decree obtained by domiciliaries of New York, the Comptroller General has said that after September 1, 1967, because of uncertainty raised by new sections of the Domestic Relations Law of New York, the New York cases no longer will be viewed as constituting a judicial determination of the validity of a Mexican divorce.

6. As to the question of a competent court in the U.S. determining the validity of the particular Mexican divorce, the Comptroller General has recognized that a state court would not grant a declaratory judgment on the validity of the divorce, and therefore has advised the interested parties of their right to have their entitlement to increased allowances on account of a lawful spouse litigated in the Court of Claims of the United States and the United States District Courts. It is evident, however, that even this recourse is unavailable to many Agency employees.

Distribution of Death Benefits

7. The next problem area involves the distribution of death benefits of a deceased employee who remarried after a Mexican divorce. The Comptroller General, using the same rationale applied in the

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"increased allowances" situation, recently disallowed a claim for a death gratuity as "surviving spouse" of the decedent. The decedent's previous marriage had been dissolved by a Mexican divorce granted to his former wife.

8. The question raised is who is the lawful "surviving spouse" entitled to the decedent-employee's death benefits. The following are instances in which this question is likely to arise:

a. Bureau of Employees' Compensation death benefits are payable first to "the widow who was living with or dependent for support upon the deceased employee at the time of his death," or "the widower who was dependent upon the deceased employee at the time of her death." The claim for BEC compensation on account of death inquires not only as to the decedent's prior marriages, but when and how they were terminated. It would appear, therefore, that the claim itself would flag the fact of a Mexican divorce.

b. Under Social Security even a divorced wife can get widow's benefits under certain specified conditions and restrictions. If the legality of the divorce is disputed, a wife may be able to collect benefits without the specific conditions or restrictions if the courts of the state in which her husband lived would hold that the couple were still validly married.

c. An employee may designate any beneficiary he desires with regard to "unpaid compensation of a deceased civilian employee" and also insurance benefits under FEGLI, UBLIC and WAEPA. However, if there is no such designation, then as to the "unpaid compensation" the "surviving spouse" takes the benefits. In the case of FEGLI, the "widow or widower of the insured" takes the insurance benefits. The FEGLI claim elicits information concerning prior marriages of the decedent and how and when such marriages were terminated. In the case of UBLIC and WAEPA, the estate of the decedent receives the insurance benefits if there is no designated beneficiary. The estate of a decedent is distributed either by the will of the decedent or, if there is no will, pursuant to state statutory precedence which generally begins with the "surviving spouse" of the decedent.

d. The application for death benefits under the Civil Service Retirement System elicits information concerning the decedent's prior marriages and how and when the said marriages were terminated. Once again the question arises as to who is the lawful "widow" or "widower" for a survivor annuity. The same question arises under the CIA Retirement Act.

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Immigration and Naturalization of Subsequent Foreign National Spouse

9. An additional problem area arises when the employee, after obtaining a Mexican divorce, marries a foreign national. It is possible that the alien spouse will be confronted with immigration problems, especially where the Mexican divorce was of the "mail order" variety. Even assuming that the alien-spouse clears immigration, it can be stated unequivocally, in the case of a "mail order" decree, that the preferential naturalization procedures available to a spouse of a U.S. citizen will not be available to the alien-spouse. While there is some doubt, it would appear that naturalization can eventually take place, but only after five years of continuous domicile in the United States, being physically present at least one-half of that time.

SUMMARY

10. In summation, the foreign divorce decree, in particular the Mexican divorce, is fraught with a host of unfavorable consequences which continue even after the death of the party or parties to the divorce. In the first instance, there is the prospect of outside litigation for reasons totally unrelated to any benefits derived from Government employment. In the second instance, the Agency employee who remarries is confronted with the possible loss of increased allowances on account of such marital relationship. In the third instance, there is raised the problem of who is entitled to the employee-decedent's death benefits as surviving spouse. Finally, there are problems associated with the immigration and naturalization of an alien-spouse of an employee who has received a foreign divorce decree to dissolve a prior marriage. In the final analysis, an employee would be well advised to avoid procuring a divorce decree that presents so many unfavorable consequences.

DISTRIBUTION: ALL EMPLOYEES

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TRANSMITTAL SLIP		
TO: Mr. Coffey		
THRU: [REDACTED]		
ROOM NO.	BUILDING	
REMARKS:		
<p>For authentication.</p> <p>This bulletin, initiated by the Office of General Counsel, deals with problems and consequences involved in a Mexican divorce. It was not deemed necessary to send information memorandums to coordinators. A book dispatch is being sent to the field.</p> <p>Recommend <u>one</u> signature.</p> <div style="border: 1px solid black; height: 50px; width: 150px; margin: 10px auto;"></div>		
FROM:		
ROOM NO.	BUILDING	EXTENSION

FORM NO. 241
1 FEB 55

REPLACES FORM 36-8
WHICH MAY BE USED.

(47)

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RCB preparing as

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STAT

TRANSMITTAL SLIP		DATE
TO: Peggy		
ROOM NO.	BUILDING	
REMARKS: Per our telecon of 6/1/70. This is the way the proposal was sent to us.		
FROM: Barb		
ROOM NO.	BUILDING	EXTENSION

FORM NO. 241
1 FEB 55

REPLACES FORM 36-8
WHICH MAY BE USED.

(47)

OGC 70-0632

24 April 1970

MEMORANDUM FOR: Director of Personnel

SUBJECT: Mexican Divorce Problem

1. Attached is a commentary on the Mexican divorce problem. This is based on the earlier OGC opinion but is put in a format suitable for publication in some appropriate form, either in the Support Bulletin or possibly even an Agency notice. We leave it to you as to what should be done about publication.

2. We would like to point out that just recently we uncovered another Mexican divorce situation in the Agency with both husband and wife being employees of the Agency. Their divorce was obtained within the last few weeks and on the advice of a Virginia attorney. It would seem that possibly publication could forestall at least some of the future cases. Also please note that in its present form this is unclassified and it is to be hoped that it would be published in such fashion to be of maximum usefulness.

CONFIDENTIAL
DECLASSIFIED

30 APR 1970
JAN 51
JOHN S. WARNER
Deputy General Counsel

Att.

MEXICAN DIVORCE - A HOST OF UNFAVORABLE CONSEQUENCES

The following commentary treats with the actual and potential consequences and problems confronting employees who obtain foreign divorces, in particular a "Mexican divorce."

The term "Mexican divorce" is generally understood to include a decree procured by any one of the following three methods:

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It can be stated unequivocally that the "mail order divorce" is not recognized by any American jurisdiction. The overwhelming majority of states having ruled on the validity of the "one-party divorce" have held the decrees to be invalid. Lastly, even the "bi-party divorce" has been invalidated by some states having ruled on them. New York appears to be the most notable exception, generally recognizing the validity of the "bi-party" Mexican divorce.

The Mexican divorce has been the subject of considerable litigation. This litigation can arise not only during the lifetime of the parties to the divorce, but particularly upon the death of either party when determining the lawful heirs to the decedent's estate. In addition to potential litigation problems, the Agency employee who is a party to a Mexican divorce and subsequently remarries is confronted with serious problems affecting his or her entitlement to various government benefits while living and also the distribution of benefits in the event of his or her death.

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SUMMARY

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Mr. Coffey:

The meeting has been set
for 3 o'clock 17 March with
Colonel White et al. I advised
Mr. Wattles' secretary.

I have not shown these
papers to Mr. Bannerman yet
so please return to me. Thank
you.

Miriam 3/12

90 day
reopen check
BRI

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ROUTING AND RECORD SHEET

SUBJECT: (Optional)

Mexican Divorce Problem

FROM:

Director of Personnel
5E-56 HQ's

EXTENSION

NO.

DATE

9 MAR 1970

STAT

TO: (Officer designation, room number, and building)

DATE

RECEIVED

FORWARDED

OFFICER'S INITIALS

COMMENTS (Number each comment to show from whom to whom. Draw a line across column after each comment.)

1. *[initials]*
Executive Director-Comptroller
7E-12 Headquarters

3/9

3/10

[initials]

Attached is the memorandum you asked for on Mexican divorces. It is intended as a briefing paper. It is my opinion that we do not need nor want an official policy approved by you on this subject. Note that John Warner concurs. I am prepared to discuss further at your convenience.

DDS

STAT

[Redacted Signature Box]

Robert S. Wattles
Director of Personnel

Bob: I would like to meet briefly with you, Sen. Canine, and Mr. Lee to discuss this matter. Please get on my calendar sometime soon.

[Redacted Signature Box]

10 Mar 70

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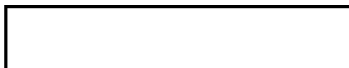
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5 March 1970

MEMORANDUM FOR:



STAT

SUBJECT:

Mexican Divorce Problem

1. On the Mexican divorce problem, I do not believe it appropriate that a formal memorandum be presented to Colonel White for his approval and our concurrence.
2. I would like to see greater emphasis on notification to people of the problems connected with a Mexican divorce when we learn those specific situations. I think it should be pointed out to Colonel White that the Agency does have an interest in these matters since, out of any given number of Mexican divorce situations, eventually we will have litigation which inevitably will pose security problems because of the various cover situations in which our employees are involved. Therefore, I feel it appropriate that we request employees to take positive action to correct defective Mexican divorces and that we institute follow-up systems to insure that they do.
3. I discussed this problem at length with Ed Lysterly in State Department. He indicated that where they learn of a Mexican divorce situation they do alert the employee concerned, pointing out the potential legal problems and urge them to take appropriate action. They do not actively seek out Mexican divorce situations and even where they find them they do not cut off allowances. In one case, however, where an employee notified the Department that he was leaving his station temporarily to procure a one-party Mexican divorce, he was informed that this was not the proper course of action; nevertheless, he obtained the Mexican divorce and immediately remarried. In that case his allowances, because of the wife, were cut off.

/s/

JOHN S. WARNER
Deputy General Counsel

TRANSMITTAL SLIP		DATE 9 MAR 1970	
TO: Deputy Director for Support			
ROOM NO. 7D-18	BUILDING HQ		
REMARKS:			
FROM: D/Pers			
ROOM NO. 5E-56	BUILDING HQ		
FORM NO. 241 1 FEB 55		REPLACES FORM 36-8 WHICH MAY BE USED.	

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10 Mar 70

MR. COFFEY

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JOHN S. WARNER
Deputy General Counsel